Long Island College Hospital *and* 1199, National Health and Human Service Employees Union, AFL–CIO. Case 29–CA–20526

March 22, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND BRAME

On December 11, 1997, Administrative Law Judge Michael A. Marcionese issued the attached decision. The Respondent filed exceptions and a supporting brief, the Charging Party filed a memorandum of law in opposition to the Respondent's exceptions, and the General Counsel filed a brief in support of the judge's decision and a letter in answer to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Long Island College Hospital, Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Tracy Belfiore, Esq., for the General Counsel.
Joel E. Cohen, Esq., for the Respondent.
Pamela Jeffrey, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL A. MARCIONESE, Administrative Law Judge. This case was tried in Brooklyn, New York, on September 18, 1997. The charge was filed by 1199, National Health and Human Service Employees Union, AFL–CIO (the Union) on December 9, 1996, and the complaint was issued June 16, 1997.

The complaint alleges that Respondent Long Island College Hospital violated Section 8(a)(1) of the Act, in or about July 1996,[1] by statements of its alleged Supervisor Carolyn Nash, and, on November 30, by a letter dated November 27, from its attorney to employee Edward Gray. Respondent, in its answer, admitted that Nash is a supervisor, but denied the unfair labor practice allegations of the complaint. At the hearing, Respondent admitted that Respondent's attorney was acting as its agent in sending the letter to Gray.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Party, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, operates a hospital at its facility in Brooklyn, New York, where it annually derives gross revenues in excess of $250,000 and purchases and receives goods and materials valued in excess of $5000 directly from points outside the State of New York. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act.

The Respondent further admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Union represents, inter alia, certified social workers and social work assistants employed by Respondent. The record reveals that, sometime in 1996, Respondent implemented a case management system which consisted of nonunit registered nurses (RNs), classified as "case managers," being assigned to manage the care of individual patients during their hospital stay. It appears from the record that Respondent employed no more than seven such case managers during 1996. During the summer, conflicts arose between unit employees in the social work department and these case managers over their respective roles, in particular in connection with discharge planning. Carolyn Nash, Respondent's director of social work at the time and an admitted supervisor, acknowledged that there was tension in the department over the advent of case management and its impact on the role of social workers and that she and other managers in the department shared the concerns of unit employees over this issue.

Edward Gray is employed by Respondent as a certified social worker in the renal (dialysis) area. He is a member of the Union and, on August 1, he was elected a union delegate by other employees in the social work department. Gray testified that he organized and facilitated weekly meetings of Respondent's social workers at a coffeeshop across the street from the hospital beginning in July. At these meetings, the social workers and social work assistants discussed, among other things, their experiences with case management, their concerns over perceived erosion of their work by this new group of employees and its impact on patient care. Gray's testimony regarding these meetings was corroborated by his colleagues and unit employees Rena Martin and Vivian Meekinson. Moreover, Nash testified that her supervisors, in particular Francine Cragger, the vice president of nursing, were aware of these meetings and Gray's involvement in them.

There is no dispute that, on July 12, Respondent notified two social work assistants that their positions in discharge planning were being eliminated and that they would be laid off effective August 9.[2] On July 19, the Union filed a grievance alleging that these layoffs were the result of Respondent assigning unit work (discharge planning) to nonunit nurses in violation of the collective-bargaining agreement. Gray attended a grievance meeting in connection with this grievance which was held on August 7.[3] The layoff and the employees' belief that the duties of the laid-off employees were being performed by nonunit case managers became the subject of discussion at the meetings in the coffeeshop.

[1] All dates are in 1996 unless otherwise indicated.

[2] One of the social work assistants exercised her seniority rights to bump another social work assistant who worked in a different area.

[3] Although Gray testified that he believed the meeting was in July, correspondence which was received in evidence by stipulation establishes the date of this meeting as August 7.

Gray testified that, in July, he and the two other social workers in the renal area requested a meeting with department management to seek guidance and direction on how to deal with the threat of case management. After first meeting with their immediate supervisor, Kathryn O'Shaughnessy, Gray, Martin, and Douglas Riding met with Nash on July 31. The employees expressed their concerns over erosion of their job functions by case management RNs and how the case management system interfered with their ability to serve patients. Nash told the employees she understood and shared their concerns, but that she was caught in the middle. According to Gray, Nash offered no direction, tactics, or strategy to deal with the issue. Instead, she told the employees that social work had "missed the train" on case management and that nursing already owned it. The employees told Nash they were considering going to the Union for assistance on this issue and asked her views on this approach. Nash told the employees that they had a right to go to the Union, but to proceed cautiously because Gray had been labeled the "flavor of the month" by administration. Nash did not explain this comment nor was she asked to by any employee at the meeting. Gray told Nash that the employees would contact the Union. Martin corroborated Gray regarding this meeting. Nash testified, contrary to Gray, that she did provide guidance to the employees regarding strategy. She also admitted telling the employees to proceed with caution if they involved the Union because Gray was becoming very well known in administration and that he was being called the "flavor of the month" because of his position as spokesman for the department on this issue.

The complaint alleges that Respondent, through Nash's statements at this meeting, "warned and threatened its employees with unspecified reprisals if they sought the assistance of the Union." Because there is no dispute that Nash made the allegedly unlawful statements attributed to her by the General Counsel's witnesses, it must be determined whether her cautionary advice to Gray and his fellow employees had the reasonable tendency to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. The Board has previously found "friendly warnings" from supervisors to employees to "watch your back," "keep a low profile" and similar advice to be unlawful. See *Jordan Marsh Stores Corp.,* 317 NLRB 460, 462–463 (1995), and cases cited therein. Nash's advice to the employees here, i.e., to proceed with caution, suggests that their resort to the Union could have adverse consequences for the employees. When this advice is coupled with the statement that their spokesman, Gray, was getting a reputation with management, the implication is clear that Respondent's management did not look favorably upon union activity by its employees. See *Perth Amboy Hospital,* 279 NLRB 52 fn. 2 (1986). Nash's warning to the employees, uttered in the context of her characterization of Gray as "flavor of the month", was not a "normal response to a discussion the employees themselves had initiated." Cf. *Masdon Industries,* 212 NLRB 505 (1974). On the contrary, it was a coercive statement in violation of Section 8(a)(1) of the Act.[4]

On August 5, a memo from management was distributed at the hospital "to outline upcoming changes in the Case Management Department as a result of the Case Management-Discharge Planning merger." According to the memo, the changes were to be implemented August 12, which was the Monday following the effective date of the layoff of the social work assistants in discharge planning. One of the changes outlined was that case managers would assume full responsibility for discharge planning for all patients on their unit, with the exception of renal, AIDS, pediatric, and neonatal intensive care patients being followed by social work. Meekinson, a social worker in the medical/surgical unit assigned at the time to the seventh floor, testified without contradiction that the laid-off employees worked on her floor and that she observed the case manager on the unit, Ellen Mitchell, doing their work after the layoff. According to Gray and Meekinson, the memo and Meekinson's observations were discussed among the employees during their weekly meetings in the coffeeshop.

On September 18, the Union held a meeting of social workers at its headquarters in Manhattan. A flyer announcing the meeting identified case management as a an "alarming trend" which was "destroying the social work profession." Respondent's facility was cited as an example of the trend at facilities represented by the Union, referring to the layoff of the two social work assistants. Gray attended and spoke at this meeting. He was the only employee of Respondent to speak and, apparently, the only employee from any hospital to speak. Gray testified that he did not know a reporter from the Union was at the meeting and did not know that his speech would be quoted in any publication. He did acknowledge being asked his name by someone identified as a reporter after the meeting. Gray's statements at the meeting were reported in an article which appeared in the November edition of 1199 News, a union publication mailed to members homes and distributed at represented institutions. Gray testified that he had no input into, nor prior approval, of the article before it was printed. Gray admitted that the article accurately quoted his statements at the meeting.

The article, entitled "Social Workers Threatened," refers to the September 18 meeting and quotes the Union's president, Dennis Rivera, its classifications coordinator, David Kranz, and Gerald Beallor, identified as a social work consultant, in addition to Gray. Kranz is quoted as saying: "The case manager's mission in life is to reduce hospital length of stay. This contrasts with social workers, who are independent advocates for the patient." The next three paragraphs quote Gray as follows:

> "These battles between case managers and us go on daily," said Long Island College Hospital CSW Ed Gray. "We're already experiencing layoffs."
>
> Management has replaced some vacated social worker positions with Case Management RNs, while leaving other positions unfilled, said Gray. LICH social workers have formed alliances with doctors and others to reverse this trend.
>
> "We're advocating for patients," said Gray. "And case managers are hounding doctors to get patients out. We have to educate our colleagues. This is not an abstract thing. Jobs are being lost."
>
> LICH social workers hold weekly departmental planning meetings and have formed alliances with doctors and others to reverse this trend.

Respondent's then-human resources director, Erin O'Connor, testified that, after she saw this article, she questioned Nash about Gray's statements in the article and, believ-

[4] Most of the cases cited by Respondent in its brief are inapposite because they address the issue whether interrogation is coercive under the Board's decision in *Rossmore House*, 269 NLRB 1176 (1984).

ing they were false, contacted Respondent's counsel and directed him to send the November 27 letter to Gray. Nash confirmed that O'Connor asked her about the article, testifying that she told O'Connor that she was aware that there were differences of professional opinion between case managers and social workers, many of which she shared. Nash testified further that she would not "necessarily" categorize these differences as daily battles. Both O'Connor and Nash testified that the only lay-offs they were aware of were that of the two social work assistants, effective in August, that no case management employee replaced a social worker, and that they were unaware of any concerns or "alliances" between doctors and social workers.

The letter from Respondent's attorney, on the law firm's letterhead, was received by Gray on November 30. The letter refers to Gray's quotes in the union newspaper and asserts that they are false and that, as a social worker, Gray was aware that they are false. According to the attorney, "the net effect of your knowingly false statements is to cast aspersions on the quality of LICH's social work department in a publication that is circulated throughout the city of New York and its suburbs". The letter concludes with the following:

> Unless you agree to retract your false statements in the form of a letter to LICH and 1199 by Wednesday, December 4, 1996, LICH will have no choice but to pursue its legal remedies against you.

There is no dispute that the letter was not distributed by Respondent to any other employees, nor was a copy sent to the Union. It is also undisputed that no such letter was sent to the Union, or anyone else quoted in the article.

Gray informed the Union of the letter on Monday, December 2. That same day, the Union's attorney faxed a letter to Respondent's attorney accusing Respondent of unlawfully threatening and coercing employees in the exercise of their Section 7 rights and stating the Union's intention to file an unfair labor practice charge based on the attorney's November 27 letter. The Union's attorney asserted that Gray's statements quoted in the newspaper were true and requested a written retraction of the November 27 letter and an apology. Respondent's attorney responded with another letter, dated December 3, which was sent to the Union and Gray. In this letter, Respondent's attorney requested information from the Union to ascertain whether Gray's statements were true or not. He further advised the Union that Respondent was not trying to intimidate Gray or any other employee and that "litigation was the last thing LICH is interested in pursuing." The letter concluded by expressing Respondent's annoyance with the Union's "consistent pattern of publicly disparaging the quality of LICH's services to the general public without regard to the truth or falsity of the disparaging remarks." The parties stipulated that the Union did not respond to this letter.

Before the publication of the article in the union newspaper, Gray had also been involved in the filing of another grievance, on October 3, alleging more generally than the prior grievance, that Respondent was in violation of the collective-bargaining agreement by allowing nonbargaining unit workers to perform duties and roles of social workers currently employed and social work assistants laid off and social worker vacancies in all units of the department. That grievance was scheduled for a third-step meeting on December 5. Gray attended this meeting with the Union's vice president, Carlton Yearwood and four other department employees. O'Connor questioned Gray regarding the basis for his statements quoted in the newspaper article. Yearwood instructed Gray not to respond to these questions, telling O'Connor that the Union was there to discuss the issues raised by the grievance.

At the hearing, Gray testified regarding the basis for his statements at the September 18 union conference which were quoted in the Union's newspaper. Gray and fellow social workers Martin and Meekinson testified regarding ongoing disputes with case management RNs over discharge planning issues, providing examples of situations where each believed an RN had usurped the social worker's authority. According to Martin, because of this issue, she was "always forced to be on guard and to run into every case I had to make sure my hand was in the case first so that case management couldn't infiltrate and take on my job functions." She characterized the situation as one of "daily vigilance." Similarly, Meekinson testified that she had to be "very vigilant on a daily basis" about getting referrals or the case management RN would not give them to her. Gray, Martin, and Meekinson acknowledged in their testimony that they were unaware of any layoffs involving social workers. With regard to the statements about "alliances" with doctors, Gray and Martin testified to conversations each had with two or three doctors regarding the role of case management and its impact on patient care. According to Gray and Martin, these doctors sympathized with the social workers concerns and expressed agreement with their views. Gray and Martin acknowledged that no overt actions were taken by the employees in conjunction with these doctors prior to Gray's statements at the September 18 meeting.[5]

The complaint alleges that Respondent, through its attorney's November 27 letter, unlawfully threatened Gray with legal action and other unspecified reprisals for engaging in protected concerted activities. Respondent argues that Gray's statements quoted in the 1199 News were unprotected because the statements were deliberate and reckless falsehoods and disparaged Respondent's product or services. Respondent further argues that the threat of litigation contained in the letter to Gray was based on a colorable claim for libel and defamation and should not be found unlawful under the rationale of *Bill Johnson's Restaurants v. NLRB,* 461 U.S. 731 (1983). Finally, Respondent argues that the letter was not unlawful because Respondent was not attempting to retaliate against or chill the exercise of Section 7 rights, but was merely seeking a retraction of statements made by Gray which Respondent reasonably believed were false.

The Supreme Court, in *NLRB v. Electrical Workers IBEW Local 1229 (Jefferson Standard Broadcasting Co.),*[6] held that

[5] At the hearing, I rejected Respondent's proffer of the testimony of Dr. Lich to the effect that he did not form an alliance with employees, but acknowledging that he had a conversation with Gray on the subject of case management. Dr. Lich was not available on the day of the hearing and an adjournment would have been required to receive this testimony. Dr. Lich's opinion whether an "alliance" had been formed as a result of his conversation with Gray is not relevant to determination of the issues here. The question presented by the complaint is whether Gray's characterization of his and other employees' conversations with doctors regarding the issue of case management was knowingly false or made with malicious intent to disparage Respondent's product or services. In any event, I have assumed for purposes of deciding this case that Dr. Lich would have testified in the manner proffered by Respondent's counsel.

[6] 346 U.S. 464 (1953).

employee communications with third parties lose the protection of the Act when they do not relate to the employer's labor practices and, instead, disparage the employer's product or services. Thirteen years later, the Court held in *Linn v. United Plant Guard Workers of America, Local 114* [7] that, where either party to a labor dispute circulates false and defamatory statements, the courts have jurisdiction to apply state remedies if the complaining party pleads and proves that the statements were made with malice and injured him. While recognizing that enactment of Section 8(c) of the Act manifested congressional intent to encourage free debate on issues dividing labor and management, the Court did not interpret the Act as "giving either party license to injure the other party intentionally by circulating defamatory or insulting material known to be false." Id. at 61. The Court adopted the *New York Times v. Sullivan*[8] standard, requiring proof of actual malice and injury, to minimize the possibility that threats of lawsuits and actual lawsuits would be used to interfere with Section 7 rights. Supra, 383 U.S. at 64–65. In *Letter Carriers v. Austin,*[9] the Court reiterated its position that the vigorous exercise of Section 7 rights must not be stifled by threat of liability for overenthusiastic use of rhetoric or the innocent mistake of fact. The Court reaffirmed that statements of fact or opinion relevant to a union organizing campaign are protected even if defamatory or proven to be erroneous, unless made with knowledge of their falsity. Id. at 277–278.

In the instant case, I find that Gray was engaged in concerted activity related to a labor dispute between the Union and his employer when he spoke at the Union's conference on September 18. His appearance and speech at the conference were a continuation of his activities which commenced in July aimed at preserving the duties and functions of unit employees in the social work department from a perceived threat of erosion by the advent of case management. There is no dispute that this issue had been discussed by Gray and others at employee meetings and in meetings with department management and was the subject of at least one grievance as of the date of the conference. The conference itself was for the purpose of developing union strategy to deal with the encroachment of case management on unit work and Gray's statements included steps employees at Respondent's facility had taken to deal with the issue. Moreover, the erosion of unit work clearly relates to the wages, hours and terms and conditions of employment of unit employees.

I further find that Gray's statements at the conference, as quoted in the 1199 News did not lose the protection of the Act because they were substantially true and not made with a malicious intent to harm Respondent's reputation. Gray's characterization of disputes between unit employees in the social work department and case managers as "daily battles" is, at its worst, "overenthusiastic rhetoric" in light of the credible testimony of Gray, Martin, and Meekinson, as well as Nash's acknowledgment that there was tension in the department over this issue. His statement, "we're already experiencing layoffs," was also true since there is no dispute that two social work assistants were laid off as a result of the elimination of their positions in discharge planning and the August 5 internal hospital memo shows that discharge planning functions were being assumed by case management RNs on the med/surg units. Although Gray's statement that "management has replaced some vacated social worker positions with case management RNs while leaving other positions unfilled" may not be entirely accurate, Respondent has not demonstrated that this misstatement of fact was made maliciously. I note that the parties stipulated that seven social workers left Respondent's employ between January and the date of the conference, for various reasons, that the position of only one of these, in a methadone clinic, was discontinued, and that Respondent hired only four new social workers during the same period, three of whom were hired to fill newly created positions. Thus, there may very well be some truth to the statement that Respondent was leaving vacant social work positions unfilled. Moreover, the August 5 memo outlining changes in assignments resulting from the merger of discharge planning and case management could reasonably have led employees to believe that the work of the social workers who had left Respondent's social service department was being assumed by case management RNs. Thus, I am not prepared to find on this record that Gray made his statement with knowledge that it was false or with reckless disregard for the truth. Finally, the credible testimony of Gray and Martin, as well as Respondent's offer of proof regarding Dr. Lich's proffered testimony establishes that employees did discuss the issue with doctors who were sympathetic to their complaints regarding case management. Again, Gray's characterization of these discussions as "forming alliances" is no more than "overenthusiastic use of rhetoric" which the Supreme Court has recognized as protected in the context of a labor dispute. *Letter Carriers v. Austin,* supra. See also *Emarco, Inc.,* 284 NLRB 832, 834 (1987); *Richboro Community Mental Health Council,* 242 NLRB 1267, 1268 (1979).

Respondent relies upon the Second Circuit's decision in *Montefiore Hospital v. NLRB,*[10] denying enforcement to the Board's order which required the reinstatement of two doctors whom the Board found were discharged in violation of the Act. The court disagreed with the board and found that the conduct of the two doctors on the picket line, i.e., approaching patients, identifying themselves as doctors, telling the patients that they would be better served by going to another health care facility, was unprotected. According to the court, the doctors appealed to the patients to turn away from their employers' facility not out of sympathy with the strikers, but on the basis that the patient could not obtain competent treatment at that facility, without regard to the nature of the treatment sought or the ability of the employer to provide that treatment. Setting aside the question whether I am bound by the Board or the court's decision in *Montefiore Hospital,* supra, the facts are clearly distinguishable. Gray's statements were directed to an audience of union members and were aimed at organizing those menders to oppose the perceived erosion of their work by nonunit employees. Gray made no statements regarding the quality of care available at Respondent's facilities, and did not suggest that potential patients should go elsewhere for treatment. Gray's conduct was more akin to that of the nurses involved in *Roanoke Valley Hospital v. NLRB,*[11] whose statements to a TV reporter regarding RN coverage was found to be protected by the Board and the court because they were true and related to protected concerted activity in progress.

[7] 383 U.S. 53 (1966).
[8] 376 U.S. 254 (1964).
[9] 418 U.S. 264 (1974).
[10] 621 F.2d 510 (2d Cir. 1980).
[11] 538 F.2d 607 (4th Cir. 1976).

Having found that Gray's statements were protected, I find that November 27 letter from Respondent's attorney to Gray contained a threat to sue Gray for engaging in protected concerted activity. *Clyde Taylor Co.,* 127 NLRB 103 (1960). Respondent's argument that the Board should treat threats to sue the same as the actual filing of a lawsuit, under *Bill Johnson's Restaurants v. NLRB,*[12] has already been rejected by the Board. See *Carborundum Materials Corp.,* 286 NLRB 1321, 1323 fn. 8 (1987); *Consolidated Edison Co.,* 286 NLRB 1031, 1033 fn. 8 (1987). As the Board has pointed out, the concern for a party's constitutional right of access to the courts is not present when only a threat to sue is in issue. In any event, based on my finding above that Gray's statements quoted in the union newspaper were not made with malice, Respondent has no colorable claim for libel.[13]

Finally, Respondent argues that the November 27 letter does not violate the Act because the threat of legal action contained in the letter was not intended to chill or retaliate against the exercise of Section 7 rights. As noted above, the Board's test for determining whether an employer's statements or communications with employees violate Section 8(a)(1) is an objective one, i.e., whether the statement reasonably tends to interfere with, restrain or coerce an employee in the exercise of statutory rights. The Employer's motive in making the statement is irrelevant. *Florida Steel Corp.,* 224 NLRB 45 (1976). Moreover, Respondent sent this letter to Gray several months after its supervisor admittedly told him he had an unfavorable reputation in management because of his activities as a spokesman for employees in the social work department. The letter was also sent shortly before a grievance meeting at which the very issue which had been the subject of Gray's statements challenged in the letter were to be discussed. Finally, the letter was sent to Gray, an employee, rather than to the Union which published the newspaper containing the allegedly defamatory statements. Under these circumstances, I find that the November 27 letter had the reasonable tendency, and was in fact calculated to, restrain Gray in the exercise of his right to speak out in opposition to Respondent's implementation of case management as it impacted on unit employees in the social work department. Accordingly, Respondent violated Section 8(a)(1) of the Act as alleged.[14]

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) and a health care institution within the meaning of Section 2(14) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By warning employees to proceed with caution if they seek the assistance of the Union and informing employees that their spokesman had acquired the reputation of "flavor of the month" with Respondent's management, Respondent threatened employees with unspecified reprisals in violation of Section 8(a)(1) of the Act.

4. By sending employee Gray a letter threatening him with legal action for statements made at a union conference, Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights in violation of Section 8(a)(1) of the Act.

5. The Respondent's unfair labor practices affect commerce within the meaning of Section 2 (6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent, Long Island College Hospital, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with legal action and other unspecified reprisals if they join, support, or assist the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this order, retract the November 27, 1996 letter from Respondent attorney to employee Edward Gray.

(b) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 31, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

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[12] 461 U.S. 731 (1983).

[13] I also note that Respondent has not attempted to prove that Gray's statements caused any actual injury to Respondent, as required under *Linn*, supra.

[14] The Board's decisions in *Thomas Steel Co.,* 281 NLRB 389 (1986), and *Access Control Systems,* 270 NLRB 823 (1984), cited by Respondent, are distinguishable because the employee conduct involved in those cases was found to be unprotected.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten you with legal action and other unspecified reprisals if you join, support, or assist 1199, National Health and Human Service Employees Union, AFL–CIO or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, retract the November 27, 1996 letter sent by our attorney to employee Edward Gray.

LONG ISLAND COLLEGE HOSPITAL